*** THE HON'BLE SRI JUSTICE V.V.S.RAO**

+WRIT PETITION No.3306 of 2003

%Dated 08-03-2006

P.Mallaiah, s/o Latchaiah

… Petitioner.

VERSUS

$Government of A.P., rep. By its Secretary, Irrigation & Command Area Development Department, Secretariat, Hyderabad and another.

… Respondents.

! Counsel for Petitioner: MrR.Kameswararao.

^Counsel for the Respondents: Mr.G.Purushothama Reddy,

Asst.Govt. Pleader for Land Acquisition.

<GIST:

>HEAD NOTE:

? Cases referred

1. AIR 1968 SC 1045
2. AIR 1980 AP 246
3. 2004 (2) ALD 451 (LB)
4. AIR 1960 SC 1203
5. AIR 1966 SC 1593
6. 2002 (2) ALD 1 (LB) = 2002 (1) ALT 543d (LB)
7. 1996 (2) ALD 1215 (FB) = 1997 (1) ALT 498 (FB)

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.5111 OF 1999

DATED 8TH March, 2006

BETWEEN

P.Mallaiah, s/o Latchaiah

… Petitioner

and

Government of A.P., rep. By its Secretary, Irrigation & Command Area Development Department, Secretariat, Hyderabad and another.

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.5111 OF 1999

ORDER:

The petitioner was assigned agricultural land admeasuring Acs.1.38 guntas in survey No.441/33 in Burgampad village in Khammam District. An extent of Acs.200.00 of land including the petitioner's land got submerged in Domalavagu tank constructed by the Government. Alleging that their lands were utilized without due process of law, some land owners filed W.P.No.3261 of 1987. While the same was pending before this Court, the first respondent issued notification under Section 4(1) of the Land Acquisition Act, 1894 (the Act, for brevity) and also published the declaration under Section 6 of the Act. It is the case of the petitioner that though the land of the petitioner was included in the notification, the respondents did not pass any order and compensation was not paid. Therefore, the petitioner filed the present writ petition seeking a writ of Mandamus directing the respondents to pass award to pay the compensation under the Act.

The second respondent filed counter affidavit. It is stated that after receiving the requisition from Executive Engineer of Irrigation Department, the proposals were submitted to the Government for approval of draft notification to an extent of Ac.103.14 gts. The Government approved the same in G.O.Ms.No.555, dated 21.05.1990. In the said notification, the name of the petitioner is mentioned as occupier of the land in Survey No.441/33 situated at Burgampad village. After publication of notification under Section 4(1) of the Act, the land was surveyed by the Assistant Director of Survey and Land Records. As per the survey, the patta land under the alignment is Ac.83.14 gts and the Government land is Ac.27.35 gts. The second respondent submitted draft declaration limiting acquisition to patta land admeasuring Ac.83.14 gts. But, the Government requested to send draft errata for notification under Section 4(1) of the Act approved earlier and accordingly, a revised draft notification was submitted for acquiring land admeasuring Ac.83.14 gts. The land of the petitioner was not mentioned, as it is an assigned land. The first respondent while cancelling the earlier notification G.O.Ms.No.555, dated 21.05.1990 approved the revised draft notification for an extent of Ac.83.14 gts and the same was published in Gazette, dated 25.11.1991. Therefore, the petitioner's land was never proposed for acquisition by duly declaring the intention by way of declaration under Section 6 of the Act. The petitioner is claiming compensation for Government land, which was assigned in 1969 and which submerged in the tank. As per the orders of the Government in G.O.Ms.No.1307, dated 23.12.1993, petitioner was paid a sum of Rs.15,698/- as compensation for resumption of assigned land and the petitioner is not entitled for any other compensation under the Act. The writ petition is also opposed on the ground of delay and laches.

The learned counsel for the petitioner submits that when once the land is notified by issuing notification under Section 4(1) of the Act, the same cannot be withdrawn except in accordance with the procedure under Section 48 of the Act. In the absence of any notification withdrawing acquisition under Section 48 of the Act, having notified the petitioner's land for acquisition, the respondents are bound to pay compensation in accordance with the provisions of the Act. Alternatively, the learned

counsel submits that even when the assigned land is resumed for public purpose, the assignee is entitled for the compensation on par with the private land owners, whose lands are acquired as per the provisions of the Act. The counsel placed reliance on the decisions of the Supreme Court in **Special Land Acquisition and Rehabilation Officer v M.S.Seshagiri Rao, S.Anjuman Ahmediyya, Muslim Mission v State** and **LAO-cum-RDO, Chevella Division, Domalaguda, Hyd v Mekala Pandu**.

The learned Assistant Government Pleader for Revenue (Land Acquisition) submits that as long as the declaration under Section 6 of the Act is not made notifying the intention to acquire the land proposed for acquisition, the Government can always modify notification under Section 4(1) of the Act. In view of the errata published subsequently, the earlier notification was not followed by issuing declaration under Section 6 of the Act and therefore, the petitioner cannot claim any compensation as if his land is acquired under the Act. Nextly, the learned Assistant Government Pleader contends that the decision of the Larger Bench in **Mekala Pandu** case (supra) is subject matter of civil appeal before the Supreme Court and in view of the orders staying the payment of compensation to assignees, the ratio in the decision of the Larger Bench has no application to this case.

The notification under Section 4(1) of the Act issued vide G.O.Ms.No.555, dated 21.05.1990, published in the Gazette, dated 03.06.1990, and the notification issued under Section 4(1) vide G.O.Ms.No.1051, dated 04.11.1991, published in the Gazette, dated 25.11.1991, are placed before this Court. The counter averment that the earlier notification was not followed by a declaration under Section 6 of the Act is not denied. It is also not denied that it is only pursuant to the notification under Section 4(1) of the Act, dated 25.11.1991, that a declaration under Section 6 of the Act was issued and land acquisition proceedings were completed. The second notification does not include the land in survey No.441/33, which was assigned to the petitioner. In this factual background, it is not possible to accept the submission of the learned counsel for the petitioner that the land was acquired under the Land Acquisition Act. Needless to point out that notification under Section 4(1) of the Act is a mere proposal which cannot stand on its own unless the State declares the intention to acquire the land by issuing another declaration under Section 6 of the Act. When once declaration under 6 of the Act is issued, other steps would follow, and if the possession is not taken thereafter, it is always permissible for the State to withdraw the notification under Section 4(1) of the Act, which results in withdrawal of the proposals for acquisition of the land. Before publication of declaration, it is always permissible for the State to issue revised notification or errata to the notification and there is no prohibition in law. This legal position is well settled. The learned Assistant Government Pleader relies on the decision in **Barkya Thakur v State of Bombay** and **State of M.P. v Vishnu Prasad**.

In **Barkya Thakur** case (supra), the Supreme Court observed as under.

> The purpose of the notification under S. 4 is to carry on a preliminary investigation with a view to finding out after necessary survey and taking of levels, and, if necessary digging or boring into the subsoil whether the land was adapted for the purpose for which it was sought to be acquired. **It is**

> **only under S. 6 that a firm declaration has to be made by Government that land with proper description and so as to be identifiable is needed for a public purpose or for a Company. What was a mere proposal under S. 4 becomes the subject matter of a definite proceeding for acquisition under the Act.**
>
> (emphasis supplied)

I n **Vishnu Prasad** case (supra), the Supreme Court considered the question whether notification issued under Section 4(1) of the Act remains in force for all purposes till it is withdrawn in accordance with Section 48 of the Act. It was held that under Section 21 of the General Clauses Act, 1897, the power to issue a notification includes the power to rescind it and therefore, it is always open to the Government to rescind a notification under Section 4 or 6 of the Act and that "withdrawal under Section 48(1) of General Clauses Act is not the only way in which a notification under Section 4 or 6 can be brought to an end". It was observed as under.

> The substance of this argument is that the only way to get rid of a notification under S.4 is by a withdrawal of the acquisition proceedings under S.48; if the proceedings are not withdrawn, the notification remains and then there may be successive declarations. This argument seems to me clearly ill founded. Now a notification under S.4 will be exhausted if a declaration is made under it in respect of the entire area covered by it. Likewise, it seems to me that if the correct interpretation is that only one declaration can be made under S.6, that also would exhaust the notification under S.4; that notification would no longer remain in force to justify successive declarations under S.6 in respect of different areas included in it. There is nothing in the Act to support the view that it is only withdrawal under S.48 that puts a notification under S.4 completely out of the way. The effect of S.48 is to withdraw the acquisition proceedings, including the notification under S.4 with which it started. We are concerned not with a withdrawal but with the force of a notification under S.4 having become exhausted.

In this case, though initially the notification was issued under Section 4(1) of the Act including the land of the petitioner, subsequently, a revised notification was issued excluding the land of the petitioner and other assignees. The revised notification amounts rescinding the earlier notification, dated 21.05.1990, and therefore, the reliance placed by the learned counsel for the petitioner in the earlier notification is wholly misconceived and cannot be accepted. Therefore, this Court holds that the petitioner's land was resumed and it was not acquired.

Whether the Government is bound to pay compensation to the assignees under the provisions of the Act where such assigned lands are resumed by the Government for public purpose? A Full Bench of five learned Judges of this Court in **State of Andhra Pradesh v Bondapalli Sanyasi** while overruling the earlier decision of Full Bench of three learned Judges in **State of A.P. v P.Peda Chinnayya**, held that when the land is resumed in terms of the grant, no compensation be payable

towards resumption of land and that compensation, however, is payable if the lands have not been resumed by following due process of law. The Full Bench of seven learned Judges in **Mekala Pandu** case (supra) on reconsideration of the issue did not accept the view of the Full Bench of five learned Judges in **Bondapalli Sanyasi** case (supra) and held that assignees of Government lands are entitled to payment of compensation equivalent to the full market value of the land and other benefits on par with full owners of the land even in cases where the assigned lands are taken possession by the State in accordance with the terms of the grant. It was also held that the conditions incorporated in patta/deed of assignment shall not operate as a clog putting any restriction on the right of the assignee to claim full compensation as owner of the land.

It is brought to the notice of this Court that State has filed Special Leave Petition before the Supreme Court against **Mekala Pandu** case (surpa). This Supreme Court has passed orders staying any further payment of compensation which only means that even if assigned lands are resumed, the State need not pay any compensation as per the provisions of the Act in view of the stay orders. Though the ratio in **Mekala Pandu** case (supra) applies to this case, having regard to the orders of the stay, the petitioner can enforce his right to claim compensation only when the view of this Court in **Mekala Pandu** case (supra) is upheld. It is also brought to the notice of this Court that in accordance with the orders of Government in G.O.Ms.No.1307, the market value at the rate of Rs.7,000/- per acre was paid to the petitioner (total amount of Rs.15,698/-), which includes 15% additional ex-gratia as per the Government Order. But, as per the decision in **Mekala Pandu** case (supra), the petitioner is entitled to claim compensation as per the provisions of the Land Acquisition Act, that is to say, solatium, additional compensation and interest. A Mandamus shall issue in the above terms. However, Mandamus shall be enforceable subject to Judgment of the Supreme Court in the appeal filed against **Mekala Pandu** case (supra).

The writ petition is accordingly disposed of without any order as to costs.

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(V.V.S.RAO,J)

.03.2006

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(By order)

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